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In The

Supreme Court of the United States

October Term, 1946

No. 270

INDUSTRIAL COMMISSION OF WISCONSIN,
LEO THOMAS KOPP, and
STATE OF WISCONSIN,

Petitioners,

vs.

E. E. McCARTIN and CONTINENTAL CASUALTY COMPANY, a Corporation,

Respondents.

Brief of Respondents

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SUMMARY OF ARGUMENT

A. The decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is directly applicable and controlling in the present case.

B. The applicability of the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is not affected by the language of the Illinois settlement contract.

C. Illinois has not held that it will allow an award notwithstanding a previous award in another state and in any event the full faith and credit clause would preclude a second award in Illinois if (as in the present case) the first award was res judicata in the state where rendered.

D. The provision in Wisconsin Compensation Act for payment of $75 into State Treasury for "second injury" fund does not constitute sufficient grounds for creation of an exception to the requirements of the full faith and credit clause.

E. The decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is based on sound legal principles and should not be overruled or limited.

ARGUMENT

A.

THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS DIRECTLY APPLICABLE AND CONTROLLING IN THE PRESENT CASE

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, this court recently held that an award of workmen's compensation in the state in which the injury was sustained, the effect of which in such state is to bar further recovery, bars a further recovery for the same injury under the workmen's compensation law of the state of employment, of which the employer and the injured employee are residents. The situation presented in the *Magnolia Case* is exactly similar to the situation presented in the present case except that in this case the first award was entered in the state of employment (Illinois) where both the employer and employee resided. It is respondents' position that the *Magnolia Case* is directly applicable and controlling in the present case.

The decision in the *Magnolia Case*, supra, is based upon Article IV, Section 1 of the Federal Constitution, which provides that:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

and upon the Act of May 26, 1790 (1 Stat. 122, 28 USCA 687) providing that judgments

> "* * * shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Petitioners suggest only three reasons why the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is not applicable in the present case. In the interest of brevity we will refrain from setting forth in detail the reasons why the decision does apply. We feel that these reasons sufficiently appear from the statement of facts and the argument on other points. However, for the assistance of the court we do desire to briefly point out the principles of Illinois law which make the decision applicable.

By its terms the Illinois Act provides an exclusive remedy to an injured employee. Section 6 of the Illinois Act (Sec. 143 of Chap. 48, Ill. Rev. Stat. 1943) provides as follows:

> "No common law or statutory right to recover damages for injury or death sustained by an employee

while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury. * * *"

Section 11 of the Illinois Act (Sec. 148 of Chap. 48, Ill. Rev. Stat. 1943) provides that:

"The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or business enumerated in section three (3) of this Act. * * *"

Section 3 of the Illinois Act (Sec. 130 of Chap. 48, Ill. Rev. Stat. 1943) enumerates (1) "The erection, maintaining, removing, remodeling, altering or demolishing of any structure" and (2) "Construction, excavating or demolishing any structure." At the time he was injured Kopp was doing mason work in connection with the erection of houses in Beloit, Wisconsin. (R. 134)

The settlement contract entered into between Mr. Kopp and his employer was approved by the Illinois Industrial Commission on December 3, 1943. (R. 186) This resulted in an "award" under the Illinois law. *Hartford Accident & Indemnity Co. v. Industrial Comm.*, 320 Ill. 544; 151 N. E. 495. Under the settled law of Illinois an award of its Industrial Commission is a final and conclusive adjudication of the right of the injured employee to compensation for his injuries and res judicata in that state. The Illinois court has specifically so held in the following cases:

Centralia Coal Co. v. Industrial Comm., 297 Ill. 451, 130 N. E. 727.

Stromberg Motor Device Co. v. Industrial Comm., 305 Ill. 619, 137 N. E. 462.

The following cases further illustrate the conclusiveness of compensation awards in Illinois:

Trigg v. Industrial Comm., 364 Ill. 581, 5 N. E. 2d 394.

Brewerton Coal Co. v. Industrial Comm., 324 Ill. 89, 154 N. E. 412.

Thompson v. Industrial Comm., 351 Ill. 356, 184 N. E. 633.

Lewin Metals Corporation v. Industrial Comm., 360 Ill. 371, 196 N. E. 482.

Mr. Kopp not only obtained what in Illinois was in "legal effect an award" but he also petitioned for and obtained a "lump sum settlement order" which provided for payment of his award in a lump sum. (R. 155-157, 161-162) This is of importance in this case because Section 19(h) of the Illinois Workmen's Compensation Act (Sec. 156(h) of Chap. 48, Ill. Rev. Stat. 1943), which provides that the Illinois Industrial Commission may review an agreement or award providing for compensation in installments at any time within eighteen months after such agreement or award, contains the following provision:

"* * * Provided, further, that when compensation which is payable in accordance with an award or settlement contract approved by the Industrial Commission, is ordered paid in a lump sum by the Commission no review shall be had as in this paragraph mentioned."

See also *Michelson v. Industrial Comm.*, 375 Ill. 462, 31 N. E. 2d. 940, in which the Illinois Court held that paragraph (h) of Section 19 of the Illinois Act made it impossible for the Illinois Commission to review a lump sum settlement order.

We do not claim, as suggested by petitioners at page 8 of their brief, that the lump sum settlement order entered by the Illinois Commission in this case changed any of the provisions of the award resulting from the approval of the settlement contract. We do submit, however, that this order constitutes another reason why the Illinois proceedings resulted in a final and conclusive determination of Mr. Kopp's rights.

We submit that it clearly appears from the foregoing that the Illinois proceedings resulted in an award of compensation which was res judicata in Illinois and that the following statement in the opinion in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444, is therefore applicable:

> "Respondent (in this case Kopp) was free to pursue his remedy in either state but having chosen to seek it in Texas (in this case Illinois), where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana (in this case Wisconsin) upon the same grounds."

B.

THE APPLICABILITY OF THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS NOT AFFECTED BY THE LANGUAGE OF THE ILLINOIS SETTLEMENT CONTRACT.

Petitioners take the positive that the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, is inapplicable because the Illinois settlement contract contained the following provision: "This settlement does not effect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." (R. 152) This contract was executed by Mr. Kopp and E. E. McCartin (employer) on November 3, 1943. It should be noted that the contract provides for payment of weekly installments of compensation for a period of 120 weeks which is the full period of compensation provided by Section 8 of the Illinois Workmen's Compensation Act for "the loss of sight of an eye or for permanent and complete loss of its use." No claim is made that Mr. Kopp was not paid the full amount to which he was entitled under the terms of the Illinois Workmen's Compensation Act. (Sec. 145(e) of Ch. 48, Ill. Rev. Stat. 1943)

Respondents respectfully submit that the settlement contract is not subject to the construction placed upon it by petitioners and that the quoted clause does not render the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, inapplicable for the following reasons.

The clause in the settlement contract relied upon by petitioners was intended to mean and by its terms does mean only that if a recovery were possible under the laws of two states and if after obtaining a full recovery under

the Illinois Act Mr. Kopp had any additional rights in Wisconsin, the settlement contract could not be relied upon as anything in the nature of a release of such rights. The clause in question refers to rights that Mr. Kopp "may" have under the Wisconsin Act. It cannot be construed as an agreement that he then had any such rights and most certainly it did not constitute an agreement that he would have any enforceable rights in Wisconsin after obtaining full satisfaction of his cause of action in Illinois.

In support of their position petitioners rely upon a letter written to the Wisconsin Industrial Commission on November 3, 1943, by attorney John H. Page who represented Mr. McCartin (employer) in Illinois. In that letter Mr. Page clearly indicates the position of Mr. McCartin and his insurance carrier by stating: "It has been our thought that since McCartin and Kopp are and have been residents of Rockford, Illinois, for many years and the contract of employment was entered into at Rockford, Illinois, the Illinois Workmen's Compensation Act governs the right to and the amount of compensation payable to Kopp." (R. 169) We submit that the state court correctly answered petitioners' argument including their argument based on that portion of the letter of November 3, 1943, which is quoted at page 6 of petitioners' brief when it said:

> "The insurance carrier, through its attorney replied under date of November 3, 1943, that it understood that if it (the insurance carrier) made payments to claimant under the Illinois Workmen's Compensation Act for this injury, credit would be given for these payments *in the event an award was made to Kopp under the Wisconsin Act.* There is nothing in the letters or the provisions of the settlement contract filed

with the Illinois commission by which the insurance carrier waived any legal rights it had or granted any additional rights to claimant. It merely agreed that if claimant had any legal rights which he could establish in Wisconsin it was his privilege to do so." (R. 184)

After the settlement contract was signed Mr. Kopp voluntarily participated in a proceeding before the Illinois Commission at which time the settlement contract was approved and an order providing for payment of the amount due in a lump sum was entered. (R. 137-140, 186) The approval of the settlement contract resulted in what is, under the Illinois law, in "legal effect an award." *Hartford Accident & Indemnity Co. v. Industrial Comm.*, supra (320 Ill 544, 151 N. E. 495) It is this award and not the settlement contract which constituted a final adjudication of Mr. Kopp's right to compensation for his injury. It is the award and not the settlement contract which became res judicata in Illinois and which must be given full faith and credit in Wisconsin.

Petitioners take the position in their brief that the approved settlement contract "became in legal effect an award reserving rights under the Wisconsin Compensation Act." (p. 7) They then advance the argument that because of the claimed reservation in the Illinois award the Wisconsin Industrial Commission accorded to the Illinois award the same faith and credit it had in Illinois when additional compensation was awarded in Wisconsin. (p. 10) We respectfully contend that this argument is unsound both as to premise and conclusion.

It is elementary that the Illinois Industrial Commission had no power or authority to adjudicate Mr. Kopp's

rights under the Wisconsin Act. Section 15 of the Illinois Act (Sec. 152 of Chap. 48 Ill. Rev. Stat. 1943) provides that "the industrial commission shall administer this act." This statute marks the limit of the jurisdiction of the Illinois Commission. When the settlement contract was submitted for approval the Illinois Commission was concerned only with the question whether the contract provided for a proper disposition of Mr. Kopp's claims under the Illinois Act. The Illinois Commission lacked power to reserve any rights to Mr. Kopp under the laws of any other state and we submit that its approval of the settlement contract could not and did not reserve any rights to Mr. Kopp under the Wisconsin Act. If the Illinois Commission had the power to bind the parties by including a reservation of rights in Wisconsin in its award, it would result in conferring upon that commission the power to create rights under the Wisconsin Act and would, at least in effect, give extraterritorial effect to the laws of Illinois. It is clear that this cannot be done. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 440; *New York L. Ins. Co. v. Head*, 234 U. S. 149, 160-161. If the Illinois Commission had the power to reserve rights in Wisconsin it would follow that they have power to nullify rights in Wisconsin. Certainly no one would claim that if in fact Kopp had rights in Wisconsin after obtaining full satisfaction of his claim in Illinois those rights could be destroyed by any provision in an Illinois award.

The comments of the member of the Illinois Commission who presided at the hearing held in that state clearly indicate that in approving the settlement contract the Illi-

nois Commission did not attempt to reserve any rights in Wisconsin and did not understand that its approval had any such effect. During the Illinois hearing, the commissioner made the following statement to Mr. Kopp:

> "You are intelligent. I will approve the Lump Sum Settlement Petition if you want it but I just want you to understand it is a full settlement and it is final, you cannot make claim * * * in the future against E. E. McCartin under the provisions of the Compensation Act for the injuries you sustained on May 5, 1943, for that injury to the left eye. In other words this completely closes out your case so far as any medical, surgical or hospital expense, or as far as any additional compensation is concerned. * * *." (R. 139, 166)

> "If you are concerned about the Workmens Compensation Act in Wisconsin they have a provision in there this Settlement does not affect any rights the Applicant may have under the Compensation Act of the State of Wisconsin. I do not know what it might mean, what your rights are in the State of Wisconsin—I do not know whether the Wisconsin Act provides for any increase where it has been already closed out in another state, I do not know but that provision is in there. What it is worth I am in no position to advise you. I sit only as a member of the Industrial Commission of the State of Illinois. I do not know what the Wisconsin Act is." (R. 139-140, 167)

Mr. Kopp's reply to this statement by the Illinois commissioner indicates that he understood that he was obtaining full and final satisfaction of his claim as stated by the commissioner and that he fully appreciated at least the possibility that he would have no further claim that could be enforced in Wisconsin. He stated that he understood

the matter and knew what he was doing (R. 140) and further stated:

> "I have been through this matter for the last six months. I have thought it over thoroughly. I would very much appreciate it if you would give me a lump sum. I will take chances on Wisconsin." (R. 140)

Our position that the Illinois Commission's approval of the settlement contract could not and did not result in an award effectively reserving any rights to Mr. Kopp in Wisconsin finds support in the following statement in the opinion in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 440:

> "Here both Texas and Louisiana have undertaken to adjudicate the rights of the same parties arising from a single injury sustained in the course of employment under the same contract. Each state has awarded to respondent compensation for that injury. But whether the Texas award purported also to adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana is irrelevant to our present inquiry. For Texas is without power to give extraterritorial effect to its laws. * * * The significant question in this case is whether the full faith and credit clause has deprived Louisiana of the power to deny that the Texas award has the same binding effect on the parties in Louisiana as it has in Texas."

As we have indicated it is our position that Illinois could not and did not include an effective reservation of rights under the laws of another state in its award. It is further our position that in any event when the Wisconsin Commission made its award it did not, as petitioners claim,

accord the Illinois award the same faith and credit to which it is entitled in that state.

As we have pointed out under Section A of this brief a compensation award is, under the Illinois law, a final and conclusive adjudication of the right of the injured employee to compensation for his injuries and this is particularly true where, as in this case, the employee obtains an order directing payment of his compensation in a lump sum. There can be no question but what the Illinois award is res judicata and bars all further claims in Illinois and we submit that this would be true even if the award contained a reservation of rights in Wisconsin. The inclusion of a reservation of that kind in the award would not make it any less conclusive in Illinois and would not make further claims possible in that state. The award, even with the claimed reservation included, is res judicata and a complete bar to any further claims for compensation in Illinois. The full faith and credit clause clearly requires that it be given the same effect in Wisconsin. To give it any less effect would violate the clearly established rule that the judgments of a sister state must be given "not some, but full" faith and credit by the courts of the forum. See *Davis v. Davis*, 305 U. S. 32, 40; *Williams v. North Carolina*, 317 U. S. 287, 294.

The clause in the settlement contract relied upon by petitioners refers to any "rights" that Mr. Kopp may have under the Wisconsin Act. (R. 152) It might be admitted that both before and after this contract was executed Mr. Kopp had certain "rights" under the Wisconsin Act. However, when he obtained an award in Illinois which was res judicata and prevented any further recovery, the requirements of full faith and credit came into operation and

prevented him from enforcing his "rights" in Wisconsin. The settlement contract did not preserve anything that Mr. Kopp would not have had without the contract.

We respectfully submit that no splitting of a cause of action is involved in this case and that the settlement contract cannot be construed as containing an agreement that Mr. Kopp could split his cause of action as suggested by petitioners at pages 10-12 of their brief. It is true that only one cause of action arose when Mr. Kopp was injured. However, it does not follow from the fact that remedies were provided by two states that his single cause of action contained divisible items which were subject to "splitting." "The grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment." *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444.

When he commenced a proceeding under the Illinois statute Mr. Kopp did not seek recovery of only certain "items" constituting part of his claim. He sought recovery of his whole claim. The settlement contract did not provide for settlement of part of the claim. It provided for "full and final settlement of any and all claims of every nature and kind that applicant now has or may hereafter have on account of and arising out of said accident and injury, and by virtue of the provisions of the Workmen's Compensation Act of the State of Illinois." (R. 152) The award resulting from approval of the settlement contract was a full and final disposition of Mr. Kopp's entire claim—not part of his claim.

It cannot be said that the Illinois proceedings resulted in a splitting of Mr. Kopp's cause of action merely because the two states each afford a different measure of recovery.

The laws of each state provided a full and not merely a partial recovery. A recovery under the laws of either state results in a recovery of the entire claim and not a recovery of only certain items constituting a part of the claim. If a person injured by the negligence of another commences his action in a court whose juries are known to return verdicts lower than those returned by juries in other courts that are equally available to him, it cannot be said that he is in any way splitting his cause of action.

Mr. Kopp had possible remedies under the Wisconsin and Illinois Acts. When he proceeded in Illinois he did not split his cause of action but rather chose his remedy. He elected to pursue his remedy in Illinois rather than in Wisconsin. This made the following statement of the court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444 directly applicable:

> "Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds."

C.

ILLINOIS HAS NOT HELD THAT IT WILL ALLOW AN AWARD NOTWITHSTANDING A PREVIOUS AWARD IN ANOTHER STATE AND IN ANY EVENT THE FULL FAITH AND CREDIT CLAUSE WOULD PRECLUDE A SECOND AWARD IN ILLINOIS IF (AS IN THE PRESENT CASE) THE FIRST AWARD WAS RES JUDICATA IN THE STATE WHERE RENDERED

Petitioners' argument under Section II of their brief is based upon the assumption that "the Illinois law would not bar a recovery in Illinois notwithstanding a prior award in Wisconsin under the Wisconsin Compensation Act." (page 15) No case in which the Illinois court has sustained the granting of a second award by the Illinois Commission has been cited and we have not been able to find any case so holding. The assumption relied upon by petitioners is based upon the fact that under the Illinois law its Industrial Commission has jurisdiction to grant compensation for injuries sustained outside of the state where the contract of employment is entered into in the state. The argument being that "where the contract is made in Illinois, payment of compensation under the law of some other state would not * * * extinguish compensation rights under the Illinois law" although petitioners concede "the possibility that Illinois *might* rule that pursuing the Wisconsin remedy constituted a renouncing of rights under the Illinois law." (page 14 of petitioners' brief)

We respectfully submit that in view of the fact that Illinois has not held that it will grant a second award even in a case where the contract of employment was made in

that state, petitioners' argument is based on a faulty premise and is without force. And for the same reason the question reserved in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, which is quoted at page 12 of petitioners' brief may also be reserved in this case.

When the question of the effect to be given to the prior award of another state is presented in Illinois there would seem to be no convincing reason why, if proper defenses are raised, Illinois will not be required to hold that the full faith and credit clause precludes a second award for the same injury in that state. The reasoning adopted by this court in support of its decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, will so require. It will further require the same result in any other state so that the reserved question never can become of controlling importance.

We respectfully submit that when one state asserts the power to award compensation under its own law, notwithstanding a prior award under the law of some other jurisdiction but with credit for the amount of the first award, it characterizes not the limited nature of its own award (as petitioners claim) but rather the limited nature of the award of the first state. By assuming the power to make a second award the state involved thereby asserts, in effect, that the employee's rights and the employer's obligations are exclusively under its compensation act. It acknowledges no rights or obligations under the compensation act of the first state which are in any material sense different from or in addition to the rights under its act. It incorrectly relegates the award of the other state to the status of a mere agreement to pay a designated sum in partial satisfaction of what it considers to be the employee's right to compensation. The result might be different if the

state making the second award claimed the right to require payment of the full amount due under the terms of its compensation act without regard for and without allowing credit for the amount of the first award. But no claim is made by petitioners that an injured employee is under any circumstances entitled to a double recovery.

D.

THE PROVISION IN WISCONSIN COMPENSATION ACT FOR PAYMENT OF $75 INTO STATE TREASURY FOR "SECOND INJURY" FUND DOES NOT CONSTITUTE SUFFICIENT GROUNDS FOR CREATION OF AN EXCEPTION TO THE REQUIREMENTS OF THE FULL FAITH AND CREDIT CLAUSE

By their argument under this point petitioners seek to create an exception to the requirements of the full faith and credit clause because Wisconsin has a statute which provides for payment of $75 into its "second injury" fund in certain cases. It will be noted that this statute provides that "in case of the loss or of the total impairment of a hand, arm, foot, leg or eye, the employer shall be required to pay seventy-five dollars into the state treasury." (Sec. 102.59(2), Wis. Stats. 1943) This statute, therefore, only provides for a payment into the state treasury where there is a loss or total impairment of an eye. No loss of an eye is involved in this case and no finding of total impairment of an eye has been made. In its award the Wisconsin Commission found that "no removal of the cataract had been attempted; and * * * the ultimate impairment of vision, if

such removal were attempted, is unknown." (R. 122) The necessary conclusion of the Wisconsin Commission was that "the question of payment to the state fund must also be reserved until determination of the permanent impairment of vision." (R. 123)

It should further be noted that the hearing before the Wisconsin Commission involved only Mr. Kopp's claim for compensation. In the award it is stated that "this matter is pending before the Commission upon application by the employe for an order of award." (R. 120) The Attorney General was not represented at the hearing and no claim on behalf of the state of Wisconsin was involved or considered at the hearing. (R. 121) It was not until after the hearing that the Attorney General made a claim "on behalf of the state fund." (R. 133) There has been no trial of the question whether "the state fund" has any claim in this case. It follows that petitioners seek to create an exception to the requirements of the full faith and credit clause because of the mere possibility that the state of Wisconsin may have an interest to the extent of $75 and before the question as to whether it has such interest has been determined by appropriate proceedings in that state.

In *Williams v. North Carolina*, 317 U. S. 287, 294-295, this court made the following statement regarding exceptions to the requirement of full faith and credit:

> " 'the room left for the play of conflicting policies is a narrow one.' So far as *judgments* are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between, apart from Haddock v. Haddock. For this Court has been reluctant to admit exceptions in case of *judgments* rendered by the courts of a sister state, since

> the 'very purpose' of Art. 4, Sec. 1 was 'to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.'"

And in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438, this court said:

> "We are aware of no such exception in the case of a money judgment rendered in a civil suit. Nor are we aware of any considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to such a judgment outside the state of its rendition."

In *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 442, this court recognized the "rights" conferred on the employer "by the Texas award and the full faith and credit clause" as being superior to the interests of the state of Louisiana. We respectfully submit that the possible interest of the State of Wisconsin in this case to the extent of $75 could not possibly make this one of the "few" exceptional cases in which the requirements of the full faith and credit clause do not apply.

Petitioners suggest that the problem under the full faith and credit clause is to accommodate the conflicting interests of the two states. If this be true, we submit that the interest of Illinois arising from its responsibility to furnish relief and care to residents of that state who are incapacitated by injuries is far greater than any interest that Wisconsin could have by reason of its requirement

that in selected cases a contribution must be made to its second injury fund.

If and when it is determined that Mr. Kopp has a total impairment of his eye different questions will be presented. It will then be necessary to determine whether the requirement of the Wisconsin Statute (sec. 102.59(2), Stats. 1943) that $75 be paid into the State Treasury when such impairment is established is so far separable from the balance of the Wisconsin Compensation Act as to make it possible for the Attorney General to recover that sum in a proper proceeding even though the full faith and credit clause precludes an additional recovery of compensation by Mr. Kopp. It will be noted that the only claim involved in *Interstate Power Co. v. Industrial Comm.*, 203 Wis. 466, 234 N. W. 889 (cited and discussed at pages 19-21 of petitioners' brief) was a claim by the State of Wisconsin for payment into the State Treasury in a case where a deceased employee left no one wholly dependent for support.

E.

THE DECISION IN *MAGNOLIA PETROLEUM CO. v. HUNT*, 320 U. S. 430, IS BASED ON SOUND LEGAL PRINCIPLES AND SHOULD NOT BE OVERRULED OR LIMITED

In their brief petitioners request that the dissenting opinions in the *Magnolia Petroleum Co. Case* be considered incorporated into their brief in support of the contention that that case should be overruled or limited as to application. We may with equal appropriateness suggest that the majority opinion be incorporated into this brief in support of our contention that the case should not be overruled or limited. We make this suggestion because we are satisfied that the legal principles enumerated and discussed in the majority opinion compelled the result reached by the court and to avoid any necessity for restating those principles.

It is true that in supporting their theories as to what the law should be some writers have criticized the rule announced in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430. However, the author of the exhaustive annotation in 150 American Law Reports, Annotated, 431, whose only apparent purpose is to annotate the law as it actually exists, states that the case is in accord with "the prevailing trend of recent cases." In the annotation referred to the author states: (page 432)

> "The prevailing trend of the recent cases, however, as confirmed by the decision of the United States Supreme Court in *Magnolia Petroleum Co. vs. Hunt* * * * is toward regarding the foreign award as res judicata and entitled to full faith and credit in another

state, so as to preclude the claimant from recovering additional compensation benefits under the applicable statute of another state, the doctrine of election of remedies and estoppel being sometimes invoked to supplement the res judicata doctrine and the full faith and credit provision."

It may be admitted that prior to the decision in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, many state courts, including the Wisconsin Court, had reached the conclusion that an award in one state could not be relied upon as a bar to an additional award in another state. These cases, as well as cases expressing a contrary view, are collected in annotations in 101 A. L. R. 1445 and 150 A. L. R. 431. It will be noted that in many of these cases the requirements of full faith and credit were not relied upon as a defense. In view of the fact that the applicability of the requirements of full faith and credit is obviously presented in cases of this kind we submit that state court decisions cannot be relied upon either as establishing a correct policy or as being sufficient to support the rule announced in Section 403 of the American Law Institute, *Restatement of Conflict of Laws.* This is true because of the well established rule that this court is the final arbiter of questions relating to the applicability of the Constitutional requirement of full faith and credit and of the extent of the exceptions to the requirement. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, *Alaska Packers Asso. v. Industrial Acci. Commission*, 294 U. S. 547; *Titus v. Wallick*, 306 U. S. 291. The question could not be regarded as authoritatively settled until it was presented to and decided by this court.

At page 28 of their brief petitioners contend that "two statutorily-created causes of action came into existence as the result of one accident." This conclusion and the argument based thereon are, of course, directly contrary to the argument advanced at pages 10-12 of petitioners' brief, that the settlement contract constituted an agreement that "the employee might split his cause of action." No convincing reasons are assigned by petitioners in support of their contention that two causes of action resulted in this case. As stated by this court in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 444, "the grounds of recovery are the same in one state as in the other—the injury to the employee in the course of his employment." Only one primary right is involved—the employee's right to be reimbursed to some extent for his economic loss resulting from an industrial accident. The fact that the application of different remedies (proceedings in either Illinois or Wisconsin) might be applied does not mean that there are several causes of action. (1 Am. Jur. page 458) Mutually exclusive remedies for the enforcement of a single wrong are well known to the law. A typical example is a case where the plaintiff may either base his action upon a contract or waive the contract and base his action upon the tort.

Petitioners concede that Wisconsin must give credit for the amount of the Illinois award. By so doing they recognize that the Illinois award is entitled to at least some res judicata effect and are willing to give that award some faith and credit in Wisconsin. However, as we have pointed out at page 13 of this brief the Constitutional requirement is that "not some, but full" faith and credit must be given to the judgments of a sister state. (Davis v. Davis, supra, 305 U. S. 32, 40) If the Illinois award is, as petition-

ers admit, entitled to some faith and credit, it must follow that it is entitled to full faith and credit.

We respectfully submit that no persuasive reasons why an exception to the Constitutional requirements of full faith and credit should be created in workmen's compensation cases have been suggested by petitioners. We fail to see why the important requirements of full faith and credit should not be applied to claims for workmen's compensation with the same force to which they are applied to negligence actions. In fact there would appear to be more potent reasons for applying these requirements to cases where no fault on the part of the party against whom the claim is made is involved than for applying them in negligence cases where fault on the part of the defendant constitutes the very foundation for the action. The economic results are the same whether the workman is injured while performing services for his employer or while off duty. Even a disappointingly low verdict in a negligence case constitutes a complete bar to a second recovery in another forum. We fail to find any practical or legal reason why a recovery of compensation should not have the same effect particularly where, as in this case, the employee voluntarily chooses the forum knowing in advance the results which may be obtained in the two states. The rule contended for by petitioners would permit an injured employee to obtain a second trial of the issues relating to the extent and permanency of his injuries and make it possible for him to harass the employer with successive claims so that the employer could not determine whether he had fulfilled his obligation to compensate his employee without going to the expense of trying the same issues at least twice.

The purpose of a workmen's compensation act is to provide not only a remedy for employees which is both expeditious and independent of proof of fault "but also for employers a liable which is limited and determinate." *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 159. We submit that when Mr. Kopp's rights were finally determined in Illinois the employer acquired a right at least in the nature of a property right which was of equal dignity with the employee's rights. This would seem to follow from the language of the Illinois Statute which provides that "the compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility" of the employer. (Sec. 148 of Chap. 48, Ill. Rev. Stat. 1943) That the right thus acquired by the employer is an important right and one that is entitled to protection cannot be denied. The following language used by Mr. Justice Cardozo in the opinion in *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198, 202, has a direct application to the right thus acquired by the employer:

> "The sovereign in its discretion may refuse its aid to the foreign right. St. Louis, I. M. & So. Ry. Co. v. Taylor, 210 U. S. 281, 28 Sup. Ct. 616, 52 L. Ed. 1061; Dougherty v. Am. McKenna Process Co., 255 Ill. 369, 99 N. E. 619, L. R. A. 1915F, 955, Ann. Cas. 1913D, 568. From this it has been an easy step to the conclusion that a like freedom of choice has been confided to the courts. But that, of course, is a false view. Cuba R. R. Co. v. Crosby, supra, 222 U. S. 478, 32 Sup. Ct. 132, 56 L. Ed. 274, 38 L. R. A. (N. S.) 40. The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of jus-

tice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

It cannot be claimed that the granting full faith and credit to the Illinois award in this case violates any fundamental principle of justice or any public policy of Wisconsin. This is true because the public policy of Wisconsin as established by its legislature is that where the necessary conditions of liability exist "the recovery of compensation pursuant to the provision of this chapter (relating to workmen's compensation) shall be the exclusive remedy against the employer." (Sec. 102.03(2), Wis. Stats. 1943)

CONCLUSION

We respectfully submit that the judgment of the Supreme Court of Wisconsin should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 270.—October Term, 1946.

Industrial Commission of Wisconsin, Leo Thomas Kopp and State of Wisconsin, Petitioners, v. E. E. McCartin and Continental Casualty Company.	On Writ of Certiorari to the Supreme Court of the State of Wisconsin.

[March 31, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, this Court had occasion to consider the effect of the full faith and credit clause of the Constitution of the United States where awards are sought under the workmen's compensation laws of two states. This case presents another facet of that problem.

The facts are undisputed. Leo Thomas Kopp worked as a bricklayer for E. E. McCartin. Both were residents of Illinois. Pursuant to a contract made in Illinois, Kopp worked for McCartin on a building job in Wisconsin. He drove back and forth between his home in Illinois and his work in Wisconsin. While thus employed in Wisconsin, Kopp suffered an injury to his left eye. On June 7, 1943, he filed an application for adjustment of claim with the Industrial Commission of Wisconsin. McCartin and his insurance carrier entered an objection to the jurisdiction of the Wisconsin Commission to hear the claim. Then on July 20, 1943, Kopp filed an application for adjustment of claim with the Industrial Commission of Illinois, in which the general nature of the dispute was given as "Whether Illinois or Wisconsin has jurisdiction in my case."

Under date of October 11, 1943, the Wisconsin Commission wrote the insurance carrier that Kopp had been

informed that, so far as Wisconsin law was concerned, he was entitled to proceed under the Illinois Workmen's Compensation Act (Ill. Rev. Stat. 1943, Ch. 48, §§ 138–172) and thereafter claim compensation under the Wisconsin Workmen's Compensation Act (Wis. Stat. 1945, Ch. 102), with credit to be given for the amount paid him pursuant to the Illinois Act. A copy of this letter was sent to Kopp. Counsel for the insurance carrier replied on November 3, 1943. It was there stated that the insurance carrier understood that if payments were made by it to Kopp under the Illinois statute credit would be given for those payments in the event an award was made to Kopp under the Wisconsin Act; and with that understanding, the insurance carrier was proceeding to pay Kopp compensation under the Illinois statute.

On November 3, 1943, a settlement contract was signed by Kopp and McCartin. The parties therein agreed that the sum of $2,112 was to be paid to Kopp in full and final settlement of any and all claims arising out of Kopp's injury by virtue of the Illinois Workmen's Compensation Act. The contract also stated: "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin."

The settlement contract and a petition by Kopp that the amount due be paid to him in a lump sum were filed with the Illinois Commission on November 29, 1943. A hearing was held before a Commissioner on December 3, in the course of which attention was called to the reservation of rights in Wisconsin. The presiding Commissioner informed Kopp that he did not know what effect the reservation had or what Kopp's rights were under the Wisconsin statute. Kopp replied that he would appreciate receiving the lump sum under the Illinois law and that he would "take chances on Wisconsin." Following the hearing, the Commissioner approved the settlement con-

tract and the petition for a lump sum payment. Kopp received payment on December 7 in the amount specified in the settlement contract plus a small additional sum for temporary disability. Thereafter, on January 10, 1944, a formal order was entered by the Illinois Commission directing payment of the lump sum of $2,112. The circumstances of the entry of this later order, after payment had been made in fact, are not disclosed. No petition to review the settlement contract or lump sum payment was filed and no action to secure a review of the formal order was taken.

In the meantime, on December 20, 1943, this Court's decision in *Magnolia Petroleum Co. v. Hunt, supra*, was rendered. The Wisconsin Commission then held a hearing on February 20, 1944, on Kopp's application before it. McCartin and the insurance carrier filed an amended answer, contending that under the full faith and credit clause the Wisconsin proceedings were barred by the award and payment under the Illinois Act; reliance was placed upon the *Magnolia Petroleum Co.* case. The Commission overruled this objection and ordered the payment to Kopp of certain benefits, after giving credit for the sums paid under the Illinois Act.

The Circuit Court for Dane County, Wisconsin, set aside the Wisconsin Commission's order on the authority of the *Magnolia Petroleum Co.* case. On appeal, the Supreme Court of Wisconsin affirmed the lower court's judgment on the same authority. 248 Wis. 570, 22 N. W. 2d 522. We granted certiorari to determine the applicability of the full faith and credit clause, as interpreted in the *Magnolia Petroleum Co.* case, to the facts of this case.

It is clear, in the absence of a prior award in Wisconsin, that the compensation paid to the employee under the Illinois Workmen's Compensation Act was constitutionally proper from the full faith and credit standpoint. Illinois was the state where the parties entered

into the employment contract and its legitimate concern with that employer-employee relationship permitted it to apply its own statute even though the injury occurred elsewhere. *Alaska Packers Assn.* v. *Industrial Accident Comm'n*, 294 U. S. 532; *Cardillo* v. *Liberty Mutual Ins. Co.*, 330 U. S. —. At the same time, in view of the fact that the accident took place in Wisconsin, any full faith and credit questions that might have been raised had compensation first been awarded under the Wisconsin Workmen's Compensation Act are answered by *Pacific Employers Ins. Co.* v. *Industrial Accident Commission*, 306 U. S. 493. The troublesome problem that arises here is whether the compensation paid under the Illinois statute raises a full faith and credit bar to a subsequent award in Wisconsin for an additional amount.

If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury, the decision in the *Magnolia Petroleum Co.* case would be controlling here. The Court there found that the compensation award under the Texas Workmen's Compensation Law was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state. See *Bradford Elec. Co.* v. *Clapper*, 286 U. S. 145, 153. And since the Texas award had the degree of finality contemplated by the full faith and credit clause, it was held that Louisiana was constitutionally forbidden from entering a subsequent award under its statute. But we do not believe that the same situation exists in this case, the Illinois award being different in its nature and effect from the Texas award in the *Magnolia* case.

The Illinois Workmen's Compensation Act was concededly applicable under the circumstances of this case. Section 3 of that Act provides that it shall apply automatically and without election to all employers and em-

ployees engaged in businesses or enterprises such as those involving the erection or construction of any structure. At the time when he was injured, Kopp was doing mason work for his employer in connection with the erection of houses. Section 5 then provides that the term "employee" includes those persons "whose employment is outside the State of Illinois where the contract of hire is made within the State of Illinois.". Kopp was such an employee, having been hired in Illinois and injured while employed in Wisconsin.

Section 6 states that "No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this Act, . . ." This section has been interpreted to mean that, in situations to which the Act applies, the right of action against the employer under the Illinois common law or under the Illinois Personal Injuries Act (Ill. Rev. Stat. 1943, Ch. 70, §§ 1, 2) has been abolished. *Mississippi River Power Co.* v. *Industrial Commission*, 289 Ill. 353, 124 N. E. 552; *Faber* v. *Industrial Commission*, 352 Ill. 115, 185 N. E. 255. To that extent, the Act provides an exclusive remedy.

But there is nothing in the statute or in the decisions thereunder to indicate that it was designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. Cf. *Bradford Elec. Co.* v. *Clapper*, *supra*; *Cole* v. *Industrial Commission*, 353 Ill. 415, 187 N. E. 520. And in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, *Baltimore & Phila. Steamboat Co.* v. *Norton*, 284 U. S. 408, 414, we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only

that it is completely exclusive,

some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction. Especially is this true where the rights affected are those arising under legislation of another state and where the full faith and credit provision of the United States Constitution is brought into play. See *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439.

We need not rest our decision, however, solely upon the absence of any provision or construction of the Illinois Workmen's Compensation Act forbidding an employee from seeking alternative or additional relief under the laws of another state. There is even stronger evidence that the employee is free to ask for additional compensation in Wisconsin. That evidence is in the Illinois award itself, an award which is acknowledged to have been made in compliance with the Illinois statute.

Here the employer and the employee entered into a settlement contract fixing the amount of compensation to which the employee was entitled under the Illinois statute, thereby avoiding the expense and delay of litigating the matter. This contract, together with the employee's petition for a lump sum payment, was approved by one of the Commissioners of the Illinois Industrial Commission. By that approval, the agreement became "in legal effect an award." *Hartford Accident Co.* v. *Industrial Commission*, 320 Ill. 544, 151 N. E. 495; *Michelson* v. *Industrial Commission*, 375 Ill. 462, 31 N. E. 2d 940. Under Illinois law, such awards are described as *res judicata* on the matters thus adjudicated and agreed upon, precluding the Commission from subsequently reviewing the awards or setting them aside. *Centralia Coal Co.* v. *Industrial Commission*, 297 Ill. 451, 130 N. E. 727; *Stromberg Motor Device Co.* v. *Industrial Commission*, 305 Ill. 619, 137 N. E. 462; *Lewin Metals Corp* v. *Industrial Commission*, 360 Ill. 371, 196 N. E. 482; *Trigg* v. *Industrial Commission*, 364 Ill. 581, 5 N. E. 2d 394.

One of the provisions in the settlement contract which became the award was the statement that "This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin." That statement was made a part of the contract at the request of the employee, who had been informed by the Wisconsin Commission that he was entitled to claim an additional amount of compensation in Wisconsin after recovering in Illinois. See *Interstate Power Co.* v. *Industrial Commission*, 203 Wis. 466, 234 N. W. 889; *Salvation Army* v. *Industrial Commission*, 219 Wis. 343, 263 N. W. 349; *Wisconsin Bridge & Iron Co.* v. *Industrial Commission*, 222 Wis. 194, 268 N. W. 134. The employer's insurance carrier was likewise informed, and all the parties proceeded on the assumption that the employee was attempting to recover compensation under the statutes of both Illinois and Wisconsin, with credit to be given in Wisconsin for any sum recovered in Illinois. In furtherance of this common understanding, the above statement was inserted in the Illinois settlement contract and was brought to the attention of the Industrial Commissioner before he approved the contract. The Commissioner confessed that he did not know the meaning of this provision, but he did not order it stricken. Rather he approved it for whatever it was worth.

This contract provision saving the rights of the employee in Wisconsin thus became part of the Illinois award, an award which has achieved finality in the absence of a timely appeal. This provision means more than might be implied in the case of an ordinary judgment or decree. Any party, of course, has the right to seek another judgment or decree, however inconsistent or futile such an attempt might be; and it takes no reservation in the original judgment or decree to give him that right. But when the reservation in this award is read against the background of the Illinois Workmen's Compensation Act, it becomes

clear that the reservation spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state. And in the setting of this case, that fact is of decisive significance.

Since this Illinois award is final and conclusive only as to rights arising in Illinois, Wisconsin is free under the full faith and credit clause to grant an award of compensation in accord with its own laws. *Magnolia Petroleum Co.* v. *Hunt*, *supra*, thus does not control this case.

Reversed.

MR. JUSTICE RUTLEDGE concurs in the result.